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Attorneys for Plaintiff
AUREFLAM CORPORATION

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

AUREFLAM CORPORATION, a California corporation; Plaintiff, v. HIEP PHAN, individually and dba PHO HOA HIEP; LE HONG, individually and dba PHO HOA HIEP; and DOES 1 through 10, inclusive; Defendants.	Case No. 08-CV-00538-LAB-NLS DECLARATION OF JOHN GORMAN IN SUPPORT OF MOTION FOR ENTRY OF DEFAULT JUDGMENT [NO ORAL ARGUMENT REQUESTED; IF ORAL ARGUMENT IS DESIRED BY COURT, PLAINTIFF REQUESTS TELEPHONIC APPEARANCE] Date: July 21, 2008 Time: 11:15 a.m. Place: Courtroom 9, 2nd Floor HON. LARRY A. BURNS

I, John C. Gorman, declare:

1. I am counsel for plaintiff Aureflam Corporation ("Aureflam"). I have personal knowledge of the matters set forth in this declaration and could competently testify to them.

2. My law firm retained the services of economist Robert A. Sherwin of Analysis Group to act as a damages expert in this case. A true and correct copy of his report is attached as Exhibit A.

Based on this report, Aureflam requests an award of monetary damages for purposes of its default judgment request in the amount of $121,500.00.

3. Attached as Exhibit B is a true and correct itemization of the time spent by attorneys at Gorman & Miller, P.C. and the fees and charges incurred in this case. The attorneys' fees incurred by Aureflam as of the date of filing this motion equal $4,363.75. The requested fee award does not include any time entries that were excessive or unreasonable, and includes only attorneys' fees which were reasonable and necessary to prosecute this action. In addition, Aureflam has incurred $430.00 in recoverable costs ($350.00 for filing of the complaint and $80.00 for service of process on the two defendants).

4. Gorman & Miller, P.C. maintains offices in San Jose and Santa Monica and practices before both federal and state courts throughout Southern California. The hourly rates charged by Gorman & Miller, P.C. are consistent with (and in many instances lower than) those charged by other lawyers with comparable qualifications who handle similar cases in this district.

5. I am a 1979 graduate of Stanford Law School. Over the past 29 years I have handled numerous complex business litigation matters, including many intellectual property and trademark disputes. My services in this case are being billed to Aureflam at my standard hourly rate of $425 per hour.

6. Charles Stiegler assisted me with legal work on this matter. He is a 2006 graduate of Louisiana State University Law Center, where he graduated summa cum laude and was a member of the Law Review. His standard billing rate -- which is the rate charged

for his work on the case -- is $260 per hour.

Executed this 4th day of June 2008, at San Jose, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/John C. Gorman
JOHN C. GORMAN

EXHIBIT A

EXPERT REPORT OF ROBERT A. SHERWIN

Aureflam v. Hiep Phan, d/b/a Pho Hoa Hiep, et al.

Case No. 08 CV 538 LAB NLS
United States District Court
Southern District of California

I. QUALIFICATIONS

My name is Robert A. Sherwin. I am an expert in the fields of economics and finance. I hold a J.D. from the University of Chicago and an A.B. in Economics and Physics from Wabash College. I am a Certified Public Accountant (Illinois), and a member of the American Bar Association, the American Economic Association, and the Illinois Bar Association.

I am currently employed as Managing Principal and Vice President of Analysis Group, Inc., an economic, financial, and strategy consulting firm. Analysis Group employs over three hundred consultants in the areas of economics, financial economics, asset valuation, and strategic advisory. My responsibilities include the supervision of experts and consultants in these fields with Ph.D., MBA, and Master's degrees. Analysis Group is compensated at the rate of $550 per hour for my time. Hourly rates for other staff working on this matter range from $205 to $340 per hour.

I have frequently analyzed complex financial and economic issues relating to damages from a variety of sources, including trademark infringement. With respect to the present matter, the research and analysis were performed under my direction and guidance.

Prior to joining Analysis Group, Inc., I was Senior Economist and Vice President of Lexecon Inc., an economic consulting firm in Chicago. My curriculum vitae is attached to this report at Exhibit 1 and includes a list of matters in which I have testified at deposition or trial in the past four years and a list of my publications for at least the past ten years.

II. BACKGROUND

Aureflam Corporation ("Aureflam") is a California corporation that operates and franchises Pho Hoa restaurants. Pho Hoa is the largest Vietnamese restaurant chain in North America. The Pho Hoa restaurants operated by Aureflam primarily serve pho noodle soup and other Vietnamese-style dishes. Currently, Aureflam owns or licenses Pho Hoa restaurants in California and ten other states. It also has international locations in Canada, Korea, Philippines, Malaysia, and Singapore.

Pho Hoa Hiep Restaurant is a local Vietnamese restaurant in San Diego, California, serving similar dishes as the franchised Pho Hoa restaurants and owned by two individuals, Hiep Phan and Le Hong. At one time, Pho Hoa Hiep Restaurant operated at two locations. One is at 6947 Linda Vista Rod #H, Linda Vista, CA 92111, and the other one is at 9910 Mira Mesa Blvd #A, Mira Mesa, CA 92131. The Linda Vista location was established in 1991, which started with fewer than 60 seats, and later extended the business and doubled the space. In 2000, Pho Hoa Hiep Restaurant expanded to a Mira Mesa location, but later closed it.[1] I am uncertain when the operation at Mira Mesa location was closed, so I only consider the Pho Hoa Hiep Restaurant at Linda Vista for the purpose of my analysis in this report.

Aureflam holds a registered federal service mark on the *Pho Hoa* name. Aureflam alleges that its trademark has been and continues to be infringed by the Pho Hoa Hiep Restaurant. For the purposes of my analysis, I have assumed that the defendants have infringed.

III. ASSIGNMENT

I have been engaged by counsel for Aureflam to provide expert testimony in this matter. Specifically, I have been retained to calculate damages suffered by Aureflam stemming from Pho Hoa Hiep Restaurant's allegedly wrongful use of the *Pho Hoa* service mark. Under the assumption that infringement has continued and will continue through trial, in this report, I estimate the damages suffered by Aureflam from April 1, 2005 through May 31, 2008.

In conducting my analysis I, or Analysis Group staff at my direction, have reviewed the Complaint related to this case, the websites of Pho Hoa Hiep Restaurant and Pho Hoa restaurants, and several restaurant industry research reports from various data providers. There has been no discovery obtained from the defendant. My analysis and conclusions are based on the information available at the present time. Exhibit 2 lists the documents and data sources that I reviewed in reaching my conclusions. If and when additional information and materials becomes available to me, I will update my analysis as may be appropriate.

[1] http://www.phohoahiep.com, visited May 12, 2008.

IV. SUMMARY OF FINDINGS

I have reached the following conclusions:

- Aureflam suffered actual damages related to Pho Hoa Hiep Restaurant's infringement. Pho Hoa franchisees have historically paid Aureflam an initial franchise fee of $12,500, plus 5% of gross sales on an ongoing basis. In addition, late payment fees are charged at 15% per annum. Using a "reasonable royalty" yardstick as the measure of damages, and taking into account the "involuntary" nature of the license taken by Pho Hoa Hiep Restaurant, I estimate the value of Aureflam's damages related to use of the trademark to be 7.5% of Pho Hoa Hiep Restaurant's revenues. I therefore calculate reasonable royalties to be $78,623. In addition, I calculate pre-judgment interest at 15% per annum, and estimate the total reasonable royalties plus interest to be $98,595. See Exhibit 3.

- As an alternative to the reasonable royalty measure of damages, I have calculated the infringer's profits. Assuming that the profitability of Pho Hoa Hiep Restaurant is comparable to the industry average, I estimate the total profits derived by Pho Hoa Hiep Restaurant from the use of the accused trademark to be approximately $93,000 to $118,000. Total profits plus pre-judgment interest for Pho Hoa Hiep Restaurant are approximately $107,000 to $136,000. See Exhibits 5 and 6.

V. ACTUAL DAMAGES

Under the federal trademark statutes, I understand that the plaintiff is entitled to be compensated for any actual damages. In addition, I understand that the plaintiff may be entitled to disgorgement of the infringers' profits related to the infringement to the extent this amount is not already accounted for as actual damages.

Reasonable Royalty Rate

In this matter, Aureflam is entitled to damages calculated using a reasonable royalty measure of damages based upon the defendants' unauthorized use of the *Pho Hoa* service mark. The Lanham Act case law teaches that a royalty rate may be awarded based on established royalty rates, the going rate in the market, a license agreement, an infringer's offer to license, or other acceptable methodologies. I understand that Aureflam has franchised Pho Hoa restaurants in the United States, and it collects franchising fees from the operations of the restaurants. Accordingly, I used the franchising fees paid by legitimate franchisees as a basis to measure the value of the *Pho Hoa* service mark and the associated loss to Aureflam from Pho Hoa Hiep Restaurant's unauthorized infringement.

Auerflam receives an initial franchise license fee of $12,500. Aureflam also earns profits selling soup spice bags and miscellaneous goods to its franchisees. Finally, I understand that Aureflam receives licensee fees equal to 5% of a franchisee's gross revenues. To estimate the amount related to the license of the trademark alone, I have excluded the initial franchise fee and I have also excluded any implicit franchise fees Aureflam earns in supplying products to the franchises. Accordingly, I conservatively estimate that a reasonable royalty rate for the *Pho Hoa* service mark begins with a 5% rate.

However, I understand that it has been judicially recognized that it is neither fair nor equitable for an infringer to be given the benefit of the same royalty rate that is paid by legitimate trademark or service mark licensees and that the courts should fashion remedies that take all economic incentive out of trademark infringement. Consequently, it is appropriate to utilize a higher royalty rate for purposes of calculating trademark damages that than the 5% rate paid by authorized users of the *Pho Hoa* service mark. Under the circumstances, I have used an imputed royalty rate of 7.5% rather than 5%, which is a 50% increment over the royalty rate for a legitimate licensee.

Revenues

To calculate the royalties applicable to Pho Hoa Hiep Restaurant, I need to apply the 7.5% royalty rate to the revenues of Pho Hoa Hiep Restaurant from April 2005 through May 2008. Because of the lack of information for this restaurant, I estimate its revenues based on available industry data.

According to BizMiner January 2008 report, the average annual sales for small Vietnamese restaurants in the United States are $261,275 in 2005 and $256,383 in 2006. And according to National Restaurant Association (NRA) statistics, sales per restaurant in California are significantly higher than national average (approximately 48% higher in 2007).[2] Considering that the difference for small Vietnamese restaurants might be less significant than for other types of restaurants, I conservatively estimate that Pho Hoa Hiep Restaurant has generated 25% more revenues in 2005 and 2006 than the national average annual sales in 2005 and 2006 for small Vietnamese restaurants reported by BizMiner. I also assume that Pho Hoa Hiep Restaurant achieved a revenue growth rate of 5% in 2007 and 4.4% in 2008, which are the projected growth rate for restaurant-industry sales by NRA. I therefore, calculate the total revenues for Pho Hoa Hiep Restaurant from April 2005 through May 2008 to be $1,048,305. See Exhibit 3.

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[2] http://www.restaurant.org/pdfs/research/state/california.pdf, visited May 21, 2008.

To verify the estimates, I also analyzed the status of Pho Hoa Hiep Restaurant and additional industry data from NRA. My analysis is based on the following equation:

Revenues = Days Open × Number of Seats × Average Daily Seat Turnover × Average Check

The variables in this equation, Days Open, Number of Seats, Average Daily Seat Turnover and Average Check, are commonly used factors to verify restaurant sales data for small privately-owned restaurants with very limited public disclosure. I understand that the Pho Hoa Hiep Restaurant is opened seven days a week and has total of about 60 seats. Its online menu shows that the price for its main dishes (Pho, Com tam, or vermicelli rice noodle) ranges from $4.25 to $6.45, and the prices are about $3 for appetizers, $2 for beverages, and $2 for desserts. Therefore, for my analysis, I assume that Pho Hoa Hiep Restaurant has 60 seats, is opened 350 days in a year, and the average check per seat is $7.[3]

To estimate the Average Daily Seat Turnover number, I reviewed the Restaurant Industry Operations Report from NRA. Each year, NRA, together with Deloitte & Touche LLP, survey hundreds of restaurants in the United States, including full service restaurants and limited service restaurants with various sizes, and publish the report. The 2007-2008 edition shows that the median Average Daily Seat Turnover is 4.3 for the Limited Service Restaurants.[4] Applying this number and the estimated numbers for other variables to the equation, the estimated revenues for Pho Hoa Hiep Restaurant from April 2005 through May 2008 would be approximately $2 million, significantly higher than the estimate of $1,048,305 based on BizMiner data. Considering that Vietnamese restaurants might receive less traffic than the average Limited Service Restaurants in the United States and in order to be conservative, I also applied the lower quartile of Average Daily Seat Turnover for Limited Service Restaurants, which is 2.3, to the equation. This would result in the estimated revenues of $1,070,650, which is close to the estimate based on BizMiner data. See Exhibit 4.

Reasonable Royalties

Using the 7.5% royalty rate and the estimated revenues based on BizMiner data, I then calculate reasonable royalties to be total of $78,623 for Pho Hoa Hiep Restaurant. In addition, I have calculated pre-judgment interest through May 2008 using the annually compounded rate of 15% (interest that Aureflam assesses on late payments from franchisees). Total royalties plus pre-judgment interest from April 2005 through May 2008 are total of $98,595. See Exhibit 3.

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[3] This is consistent with almost all patrons purchasing a main dish, most purchasing a drink, and a few purchasing an appetizer.

[4] The Average Daily Seat Turnover seems fairly stable over the years. NRA reported that the limited-service restaurants had a median Average Daily Seat Turnover of 5.1 in 1999 and 4.4 in 2000, compared to 4.3 in the Restaurant Industry Operations Report, 2007-2008 edition.

VI. DISGORGEMENT OF INFRINGERS' PROFITS

I understand that from no later than April 2005 through no earlier than May 2008, defendants used the *Pho Hoa* service mark without authorization from plaintiff. One potential damage remedy for the plaintiff is the disgorgement of defendants' wrongfully earned profits. In what follows, I will estimate the profits received by defendants with the aid of wrongfully used trademark as a result of using the service mark.

As discussed earlier, I estimate the revenues of Pho Hoa Hiep Restaurant using the *Pho Hoa* service mark from April 2005 through May 2008 to be $1,048,305. From revenues, related costs may be deducted. It is the defendant's burden to demonstrate its costs. I have nevertheless reviewed the cost and profit information reported by BizMiner for the small Vietnamese restaurants, information reported by Risk Management Association (RMA) for the limited service restaurants with comparable size, and information reported by NRA for the limited service restaurants. I also assumed that the profitability of Pho Hoa Hiep Restaurant is comparable to what is reflected in the industry benchmarks.

Because compensation to owners/officers represent the benefit of owning the company, and, consequently, of any misuse of plaintiffs' intellectual property, I have excluded them from operating expenses and considered operating income before owners' compensation for the analysis. This is a common practice when considering the profits of businesses in which owners participate. I did not find information regarding owners' compensation in the NRA reports. Therefore, I did not use the profitability data from NRA for this analysis. However, I found the profit ratio (after owners' compensation) reported by NRA is in line with the numbers in BizMiner and RMA reports.[5]

Based on the annual RMA data, the average ratio of operating income before owners' compensation as a percentage of revenue for 2002 to 2006 is 8.8%, and based on the annual BizMiner data, the average ratio of operating income before owners' compensation as a percentage of revenue for 2002 to 2006 is 11.2%. The profit ratio does not appear to fluctuate significantly in the five-year period. See Exhibits 7 and 8. Accordingly, I apply the profit ratios of 8.8% and 11.2% to the estimated revenues of Pho Hoa Hiep Restaurant, and calculate

[5] NRA reports the median operating income ratio of 9.7% for Limited Service Restaurants in the Restaurant Industry Operations Report, 2007-2008 edition.

the total profits before owners' compensation through May 2008 to be approximately $93,000 to $118,000 for Pho Hoa Hiep Restaurant. In addition, using a California statutory rate of 10% (using simple interest without compounding), I calculate total profits plus pre-judgment interest through May 2008 to be approximately $107,000 to $136,000 for Pho Hoa Hiep Restaurant. See Exhibits 5 and 6. I consider the estimate conservative because compared to the industry average, Pho Hoa Hiep Restaurant may well have earned profit premiums from using the *Pho Hoa* service mark.

VII. CONCLUSION

Based on my analysis of the evidence in this case, I conclude that Aureflam has suffered damages as a result of Pho Hoa Hiep Restaurant's trademark infringement. I estimate these damages, including pre-judgment interest, to be $98,595 from April 2005 through May 2008 based on the reasonable royalty analysis. Alternatively, a disgorgement of profit approach suggests that total profits plus pre-judgment interest are approximately $107,000 to $136,000.

Signed on the 22nd day of May 2008, at Los Angeles, California.

Exhibit 1

ROBERT A. SHERWIN
Managing Principal

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EDUCATION

1985	CPA, State of Illinois
1978	J.D., University of Chicago
1975	A.B. in Economics and Physics, Wabash College

PROFESSIONAL EMPLOYMENT

Analysis Group, Inc. Los Angeles, CA	Managing Principal and Vice President (2003 - present) Principal and Vice President (1989 - 2003) Member, Board of Directors (1995 - 1997)
Analysis Group/Economics Los Angeles, CA	Principal (1995 - 2003)
Lexecon Inc. Chicago, IL	Senior Economist, Vice President (1977 - 1989)

ACADEMIC HONORS AND FELLOWSHIPS

George Lewes Mackintosh Fellow

Summa Cum Laude

Phi Beta Kappa

Distinction in Senior Comprehensive Examinations in both fields

Wall Street Journal Award for outstanding business student

PROFESSIONAL AFFILIATIONS

American Bar Association

American Economic Association

Illinois Bar Association

PUBLICATIONS

"Economic Analysis of Intellectual Property Rights" (with Elizabeth Evans and Martha Samuelson), in *Litigation Services Handbook*, (Frank, Weil, and Wagner, editors 3rd ed. 2001)

"Damage Awards" (with John C. Jarosz) in *The IP Litigator* (Sept./Oct. 1996) p. 19

"Economic Analysis of Intellectual Property Rights" (with Elizabeth Evans and Martha Samuelson), in *Litigation Services Handbook*, (Frank, Weil, and Wagner, editors 2nd ed. 1995)

"Comments on Werden and Froeb -- Correlation, Causality, and all that Jazz," *8 Rev. of Industrial Org.* 355 (1993)

"Navigating the Changing Tides of Managed Care and Health Reform," (contributing author) (American Medical Association Monograph 1994)

"The Extent of the Market," (with George J. Stigler), *28 J. Law & Econ.* 555 (1985), republished in *Monopoly and Competition Policy*, Volume II (F.M. Scherer, ed. 1994)

TESTIFYING EXPERIENCE

- **Garvin v. Siegel**
  California Superior Court, Ventura County
  Trial and deposition testimony regarding the value of lost support in a wrongful-death action. (2007)
- **The First Marblehead Corp. v. House**
  United States District Court, District of Massachusetts
  Trial testimony regarding whether exercising employee stock options held by former employee would have made financial sense at the time he quit the company. (2007)
- **Highmark, Inc. v. Allcare Health Management System, Inc.**
  United States District Court, Northern District of Texas
  Deposition testimony regarding damages in a patent infringement case involving electronic processing and adjudicating medical claims by providers. (2007)
- **DIRECTV, Inc. v. Lifetime Entertainment Services**
  United States District Court, Central District of California
  Deposition testimony regarding damages to a satellite-television provider resulting from the alleged violation of a "Most Favored Nations" provision. (2007)
- **Foppiano v. Union Safe Deposit Bank**
  California Superior Court, San Joaquin County
  Deposition testimony regarding damages suffered by a truck farmer and produce packager from alleged fraud, breach of contract and breach of fiduciary duty (relating to a proposed loan). (2007)
- **AIG Annuity Ins. Co. v. Sears, Roebuck and Co.**
  192nd Judicial District, Dallas County, Texas
  Trial and deposition testimony regarding damages suffered by bond holders from alleged premature redemption of bonds with above-market interest rates. (2006, 2007)
- **Layne v. Noritsu America Corp.**
  Arbitration
  Trial testimony regarding damages to a retail photo-developer resulting from alleged defects in a processing machine. (2007)
- **State of Ark. Teacher Ret. Sys. v. Merrill Lynch & Co., Inc.**
  193rd Judicial District, Dallas County, Texas
  Deposition testimony regarding material misstatements of financial results and defendant's knowledge regarding those misstatements. (2006)

- **Frontier Infiniti v. Nissan North America, Inc.**
  California New Motor Vehicle Board
  Hearing and deposition testimony regarding likely financial effects on existing new car dealership resulting from a proposed proximate competing dealership. (2006)

- **Ciena Corp. v. Nortel Networks Inc.**
  United States District Court, Eastern District of Texas
  Deposition testimony regarding lost profits and reasonable royalty damages in a patent infringement case involving fiber optics equipment. (2006)

- **Chevron Texaco Credit Union v. The Members Group**
  Arbitration
  Deposition testimony regarding damages to a federal credit union from alleged professional malpractice. (2006)

- **In re: Nanovation Technologies, Inc.**
  United States Bankruptcy Court, Northern District of Illinois
  Trial and deposition testimony regarding the value of a development stage company in the photonics industry. (2006)

- **Robins v. Roland**
  California Superior Court, Los Angeles.
  Trial and deposition testimony regarding the valuation of a land development company and the net payments owed to departing owners. (2006)

- **Dvorchak v. eMachines, Inc.**
  California Superior Court, Orange County
  Deposition testimony regarding whether the market for eMachines was efficient, the response of the market to items of information, and eMachine's fair market value at the time of a tender offer. (2006)

- **Fisher Tool Co., Inc. v. Gillet Outillage**
  United States District Court, Central District of California
  Deposition testimony regarding market definition, market power, and prospects for using patent litigation to monopolize sales of a particular automotive hand tool. (2005)

- **Yurick v. McKesson HBOC, Inc.**
  California Superior Court, San Francisco
  Deposition testimony regarding losses suffered by individual investors as the result of a merger involving the company in which they were invested. (2005)

- **SourceTrack, LLC v. Ariba, Inc.**
  Florida Circuit Court, Hillsborough County
  Trial and deposition testimony regarding the valuation of a software firm providing business-to-business electronic purchasing capabilities. (2005)

- **Regents of the University of California v. ESPN, Inc.**
  United States District Court, Central District of California
  Deposition testimony regarding copyright damages resulting from the use of Hearst "Metrotone" Newsreel footage of various sports figures. (2005)

- **Fran Am Partnership, LLC v. Sports Car Club of America, Inc.**
  United States District Court, District of Colorado
  Deposition testimony regarding market definition, market power, and damages in an antitrust case involving standards setting in amateur race cars. (2004, 2005)

- **Crown Poly, Inc. v. Unistar Plastics, LLC**
  United States District Court, Central District of California
  Deposition testimony regarding lost profits and reasonable royalties in a patent infringement dispute involving plastic bags and their dispensers used for produce in grocery stores. (2005)

- **In re Clarent Corp. Securities Litigation**
  United States District Court, Northern District of California
  Trial and deposition testimony regarding class-wide securities damages from an alleged violation of Rule 10b-5. (2005)

- **Adams v. Home Depot USA, Inc.**
  California Superior Court, Riverside
  Deposition testimony regarding statistical analysis of the degree to which management responsibilities varied among members of a putative class in a wage-and-hour dispute. (2004)

- **Plantronics, Inc. v. Levin Consulting**
  Arbitration
  Trial and deposition testimony regarding damages suffered by headset manufacturer from alleged breach of contract and disclosure of trade secrets. (2004)

- **Liberty Communications, Inc. v. MCI Worldcom Communications, Inc.**
  Arbitration
  Trial and Deposition testimony regarding damages suffered by an independent sales agent for long distance services allegedly arising from misrepresentation of the account management system. (2002, 2004)

- **Jneid v. Novell, Inc.**
  California Superior Court, Orange County
  Trial and deposition testimony regarding revenue measurement for purposes of an earn-out provision. (2004, 2006)

- **FOH Holdings, Inc. v. Andersen, LLP**
  California Superior Court, Los Angeles
  Trial and deposition testimony regarding lost business value resulting from alleged accounting malpractice. (2004)

- **VSI Holdings, Inc. v. SPX Corporation**
  United States District Court, Eastern District of Michigan
  Deposition testimony regarding damages to a company resulting from an alleged breach of a contract to purchase that company. (2004)

- **Frontier Oil Corporation v. Holly Corporation**
  Delaware Chancery Court, New Castle County
  Trial and deposition testimony and trial regarding damages allegedly sustained by an acquirer when the target corporation refused to go through with the acquisition. (2003, 2004)

- **Modi Enterprises v. ESPN, Inc.**
  New York Supreme Court, New York County
  Trial and deposition testimony regarding damages suffered by the distributor of ESPN cable broadcasts in India from a variety of alleged breaches of contract. (2003, 2004)

Exhibit 2
Documents Reviewed

1	Complaint for Damages and Injunctive Relief for Violation of Lanham Act (15 U.S.C. §§ 1114 and 1125); Violation of Cal. Bus. & Prof. Code §§ 17200 & 17500, March 24, 2008
2	Aureflam Corp., v. Pho Hoa Hiep, Inc., et al., Order Granting Plaintiff's Motion for Default Judgment, May 31, 2008
3	The Risk Management Association Annual Statement Studies 2003-2004, 2004-2005, 2005-2006, 2006-2007, and 2007-2008
4	D&B Comprehensive Insight Plus Report: Pho Hoa Hiep Restaurant
5	BizMiner Small Business Financial Profile for Vietnamese restaurant, January 2008
6	National Restaurant Association and Deloitte Restaurant Industry Operations Report, 2007-2008 Edition
7	www.phohoa.com
8	www.phohoahiep.com
9	www.restaurant.org

Exhibit 3
Pho Hoa Hiep Restaurant
Reasonable Royalty

	Apr-Dec 2005[1]	2006[1]	2007[2]	Jan-May 2008[3]	Total
Industry Average Revenue	$195,956	$256,383	$269,202	$117,103	$838,644
Premium for California Restaurants	25%	25%	25%	25%	25%
Estimated Pho Hoa Hiep Restaurant Revenue[4]	$244,945	$320,479	$336,503	$146,379	**$1,048,305**
Trademark Royalty (%)	*5%*	*5%*	*5%*	*5%*	*5%*
Trademark Royalty ($)	$12,247	$16,024	$16,825	$7,319	$52,415
50% Enhancement	*2.5%*	*2.5%*	*2.5%*	*2.5%*	*2.5%*
Enhancement ($)	$6,124	$8,012	$8,413	$3,659	$26,208
Total Reasonable Royalty	$18,371	$24,036	$25,238	$10,978	**$78,623**
Interest Rate Factor[5]	*1.48*	*1.31*	*1.14*	*1.03*	
Reasonable Royalty plus Interest	$27,149	$31,436	$28,703	$11,307	**$98,595**

Notes:
1. The revenue in 2005 and 2006 is estimated to equal the annual average sales of small Vietnamese restaurants in the United States reported by BizMiner. The revenue for Apr-Dec 2005 is estimated to equal 9/12th of the 2005 revenue.
2. The 2007 revenue is estimated based on a growth rate of 5%, which equals the National Restaurant Association forecasted growth rate of restaurant-industry sales in 2007.
3. The 2008 revenue is estimated based on a growth rate of 4.4%, which equals the National Restaurant Association forecasted growth rate of restaurant-industry sales in 2008. The revenue for Jan-May 2008 is assumed to equal 5/12th of the 2008 revenue,
4. The revenue of Pho Hoa Hiep Restaurant is estimated to equal the industry average revenue per restaurant plus a 25% premium for California restaurants.
5. Aureflam charges a 15% per annum late fee for the late payments of licensing fees from its Pho Hoa franchisees. Interest is therefore calculated through 5/31/2008 using the compounded annual rate of 15% and mid-year convention.

Source: BizMiner Report, January 2008.

Exhibit 4
Pho Hoa Hiep Restaurant
Estimated Revenue Based on Seat Turnover

	Apr-Dec 2005	2006	2007	Jan-May 2008	Total
Days Open	263	350	350	146	
Number of Seats	60	60	60	60	
Average Daily Seat Turnover Based on Industry Median	4.3	4.3	4.3	4.3	
Average Check per Seat	$7	$7	$7	$7	
Estimated Revenue [1]	$474,075	$632,100	$632,100	$263,375	**$2,001,650**
Days Open	263	350	350	146	
Number of Seats	60	60	60	60	
Average Daily Seat Turnover Based on Industry Lower Quartile	2.3	2.3	2.3	2.3	
Average Check per Seat	$7	$7	$7	$7	
Estimated Revenue [1]	$253,575	$338,100	$338,100	$140,875	**$1,070,650**

Notes:
1. The estimated revenue equals the product of days open, number of seats, average daily seat turnover and average check per seat.

Source: National Restaurant Association Restaurant Industry Operations Report, 2007-2008 edition.

Exhibit 5
Pho Hoa Hiep Restaurant
Estimated Profits Based on RMA Data

	Apr-Dec 2005	2006	2007	Jan-May 2008	Total
Revenue [1]	$ 244,945	$ 320,479	$ 336,503	$ 146,379	$ 1,048,305
% Operating Income before Owners' Comp./Revenue [2]	8.8%	8.8%	8.8%	8.8%	
Operating Income before Owners' Comp./Revenue	$ 21,629	$ 28,298	$ 29,713	$ 12,925	**$ 92,565**
Interest Rate Factor [3]	*1.28*	*1.19*	*1.09*	*1.02*	
Profit plus Interest	$ 27,673	$ 33,733	$ 32,448	$ 13,198	**$ 107,052**

Notes:
1. See Exhibit 3.
2. See Exhibit 7.
3. Interest is calculated through 5/31/2008 using a simple annual rate of 10% (California State rate) and mid-year convention.

Exhibit 6
Pho Hoa Hiep Restaurant
Estimated Profits Based on BizMiner Data

	Apr-Dec 2005	2006	2007	Jan-May 2008	Total
Revenue [1]	$ 244,945	$ 320,479	$ 336,503	$ 146,379	$ 1,048,305
% Operating Income before Owners' Comp./Revenue [2]	11.2%	11.2%	11.2%	11.2%	
Operating Income before Owners' Comp./Revenue	$ 27,468	$ 35,938	$ 37,735	$ 16,415	**$ 117,557**
Interest Rate Factor [3]	*1.28*	*1.19*	*1.09*	*1.02*	
Profit plus Interest	$ 35,144	$ 42,841	$ 41,209	$ 16,761	**$ 135,955**

Notes:
1. See Exhibit 3.
2. See Exhibit 8.
3. Interest is calculated through 5/31/2008 using a simple annual rate of 10% (California State rate) and mid-year convention.

Exhibit 7
Pho Hoa Hiep Restaurant
Profitability of Limited-Service Restaurants Reported by RMA

	2002		2003		2004		2005		2006		Average
	Assets <$0.5mm	Sales <$1mm	Assets <$0.5mm	Sales <$1mm	Assets <$0.5mm	Sales <$1mm	Assets <$0.5mm	Sales <$1mm	Assets <$0.5mm	Sales <$1mm	
Net Sales	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	
Gross Profit	63.3	61.3	62.9	62.5	61.8	61.7	62.3	60.6	59.6	59.3	
Operating Expenses	59.1	58.3	59.7	58.5	59.4	59.1	57.9	56.5	56.0	56.1	
Memo: Owners' Comp.	*4.8*	*5.8*	*4.8*	*5.2*	*5.6*	*6.0*	*4.5*	*6.2*	*5.0*	*5.7*	
Operating Income	4.2	3.0	3.2	4.0	2.4	2.6	4.4	4.2	3.5	3.2	**3.5** %
Operating Income + Owners' Comp.	9.0	8.8	8.0	9.2	8.0	8.6	8.9	10.4	8.5	8.9	**8.8** %

Sources: Risk Management Association Financial Ratio Benchmarks 2003-2007.

Exhibit 8
Pho Hoa Hiep Restaurant
Profitability of Small Vietnamese Restaurants Reported by BizMiner

	2002	2003	2004	2005	2006	Average
Net Sales	100.0 %	100.0 %	100.0 %	100.0 %	100.0 %	
Gross Profit	62.0	60.5	61.3	61.0	61.4	
Operating Expenses	53.4	52.0	53.1	52.9	53.3	
Memo: Owners' Comp.	*3.1*	*2.7*	*2.9*	*3.0*	*2.7*	
Operating Income	8.6	8.5	8.2	8.1	8.2	**8.3 %**
Operating Income + Owners' Comp.	11.7	11.3	11.2	11.1	10.9	**11.2 %**

Sources: BizMiner Report, January 2008.

EXHIBIT B

Gorman & Miller, P.C.
210 North Fourth Street
Suite 200
San Jose, CA 95112

Invoice submitted to:
Aureflam Corporation
1420 Fulton Avenue
Building B
Sacramento, CA 95825

June 03, 2008

In Reference To: San Diego Pho Hoa Hiep

Professional Services

		Hrs/Rate	
3/18/2008	Draft complaint	1.50 425.00/hr	JCG
3/20/2008	Revise complaint; prepare summons and civil cover sheet; phone call with B. Nguyen; letter to court clerk	1.00 425.00/hr	JCG
4/7/2008	Arrange service of complaint	0.25 425.00/hr	JCG
4/28/2008	Prepare and file USPTO notice	0.50 425.00/hr	JCG
5/2/2008	Draft request for default	0.25 260.00/hr	CS
5/4/2008	Revise motions for default	0.50 425.00/hr	JCG
5/5/2008	Revise motions for entry of default; file and serve	0.50 260.00/hr	CS

5/8/2008	Phone call with R. Sherwin; letter to R. Sherwin; legal analysis re: damage calculation	0.50 425.00/hr	JCG
	Review order entering defaults; serve on opposing party	0.25 260.00/hr	CS
5/19/2008	Legal analysis re: default; draft motion for default judgment	0.75 260.00/hr	CS
5/20/2008	Review R. Sherwin expert damage report	0.25 425.00/hr	JCG
5/21/2008	Inspect Linda Vista Restaurant	0.75 425.00/hr	JCG
5/22/2008	Review and legal analysis re: Sherwin report	0.50 260.00/hr	CS
	Revise motion for default judgment; additional research regarding disgorgement of profits	1.25 260.00/hr	CS
6/2/2008	Revise motion for default judgment; prepare to file	1.25 260.00/hr	CS
	Draft proposed default judgment	0.25 260.00/hr	CS
	Review and revise default judgment application; prepare Gorman declaration; legal analysis regarding: damages	1.50 425.00/hr	JCG
6/3/2008	Draft bill of costs	0.25 260.00/hr	CS
	Finalize and file motion for default judgment and bill of costs	0.50 260.00/hr	CS
	Phone call with court clerk	0.25 260.00/hr - no charge	CS

			Amount
	For professional services rendered	12.75	$4,363.75

Additional Charges:

3/21/2008	Federal Express	11.20
	Filing Fees - complaint	350.00
3/31/2008	Postage	1.40
	Copying	1.80
4/7/2008	Federal Express	11.34
4/18/2008	Service of process/Hiep Phan	60.00
	Service of process/Le Hong	20.00
5/5/2008	Federal Express	20.64
	Postage	1.16
	Copying	3.75
5/8/2008	Postage	0.82
5/22/2008	Copying	4.20
		Amount
	Total additional charges	$486.31